THE HON'BLE SRI JUSTICE C.V. RAMULU

Monday, 21st day of August, 2006

W.P.No.14280 of 2006

Between:

Sri T. Gopal Reddy … Petitioner

and

The Commissioner for Cooperation
and Registrar of Cooperative Societies,
A.P., Gruhakalpa Complex, Hyderabad
and others. … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

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O R D E R:

This Writ Petition is filed seeking a Mandamus declaring the Lease Agreement dated 30-6-2006 inclusive of the Lease Agreement dated 20-5-2006 entered into by the 6th respondent-Managing Director with the 4th respondent-M/s.Snowman Frozen Foods Limited, Bangalore, which is a non-member of the Society, as violative of Section 48 of the Andhra Pradesh Cooperative Societies Act,1964 (for short 'the Act') read with Rule 42 of the Andhra Pradesh Cooperative Societies Rules,1964 (for short 'the Rules') and contrary to the resolution dated 21-3-2006 of the Board of Directors of the Syndicate Farmers Service Cooperative Society Limited, Alwal, Secunderabad.

There is no necessity of going into all the details. It is suffice to notice that the Writ Petition is filed by the President of the 6th respondent-Society in his individual capacity challenging the correctness of the lease agreement entered into between the 6th respondent-Society represented by its Managing Director and the 4th respondent-Company for leasing out the premises of the society i.e. Hakeempet Godown/Rythu Samavesha Mandiram. According to the petitioner, Governing body meeting of the Society was held at 2.30 p.m. on 21-3-2006 at the Office of the Society at Alwal, Secunderabad. In that meeting, he also participated and a resolution was passed for leasing out the godown of the society. The proposal and the resolution

are as under:

> "***Item of Agenda***: For lease of Hakeempet Godown/Rythu Samavesha Mandiram to Snowman Co. for Rs.20,000/-. In this regard, our Society received a letter on 21-3-2006, on the same day on 21-3-2006 is received. In this letter, for 10,000 sft Rs.20,000/- rent is offered. To examine the said letter and to discuss.
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> ***Resolution:*** On examining the said letter, the President told that it is our Society, and it is part of the Project Report submitted to the Government, and if such companies come forward, our Ryots will pick up financially and Ryots are related to it. If other companies come forward to pay more than Rs.20,000/- (Rupees Twenty Thousand) – or by calling for Tenders, it is resolved to give on lease to the highest bidder with the permission of Government and Financing Bank it should be leased out, resolved unanimously."

However, neither any tenders were called for nor a person, who offered more than Rs.20,000/- as decided in the resolution was granted lease; as such, the impugned agreement is not only contrary to the very resolution passed on 21-3-2006 but also to Section 48 of the Act read with Rule 42 of the Rules; therefore, the same is liable to be set aside.

Per contra, Sri E.Madan Mohan Rao, learned counsel appearing for respondents 5 and 6, strenuously contended that the petitioner being the President of the Society is bound by the resolution passed by the Society and there is no authorization in favour of the petitioner-President to file the present Writ Petition, apart from the fact that the very Writ Petition is not maintainable, since the Society is not a 'State' within the meaning of Article 12 of the Constitution of India. Further, neither the provisions of Section 48 of the Act nor the provisions of Rule 42 of the Rules are applicable to the instant case. Section 9 of the Act authorizes the society to enter into contracts on its behalf. The restrictions on other transactions with non-members, as referred to in Section 48 of the Act, are only regarding the loans, which is the main

business of the Society. Even Rule 42 of the Rules contemplates only transactions with non-members i.e. no society shall enter into any transaction with a person other than a member, unless the bye-laws of the society permit it to enter into such transaction, and the previous sanction of the Registrar has been obtained by the Society for entering into such transactions. The present transaction is an independent contract and the society has passed a resolution and thereafter the tenders were invited and when the 4th respondent has come forward, the same was leased out to him for Rs.20,000/- as per the resolution. Therefore, the Writ Petition is liable to be dismissed.

Learned counsel for the petitioner has fairly conceded that the respondent-Society is not a State within the meaning of Article 12 of the Constitution of India. But, still it is his contention that since the society has a statutory obligation under the A.P. Cooperative Societies Act and since it had violated the same, the Writ Petition is maintainable. There cannot be any dispute that in a given case, a Writ Petition is maintainable against the society or any individual, where such society or individual supposed to perform certain duties as per the statute, have violated affecting the rights of the individual, who approached the Court. Therefore, there is no necessity of discussing the judgments relied upon by the learned counsel for the petitioner, in this regard.

Then the next question is whether there is any statutory obligation on the part of the society under Section 48 of the Act read with Rule 42 of the Rules and whether the respondents have violated the same. In this regard, learned counsel for the petitioner has stated that since the contract entered into by the society on 30-6-2006 is with a non-member of the society, it is obligated under Section 48 of the Act read with Rule 42 of the Rules to obtain prior permission of the

Registrar in entering into such contracts. In this connection, it is relevant to notice Section 48 of the Act and Rule 42 of the Rules, which read as under:

> "**48. Restrictions on other transactions with non-members:--** (1) Save as otherwise provided in Section 47, the transactions of a society, with persons other than members shall be subject to such restrictions, as may be prescribed.
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> (2) Every Primary Weavers' Cooperative Society shall produce cloth only through the members of the society by supplying raw materials to the members and receiving back cloth or fabric or product and shall not produce or purchase cloth or fabric or product from any source other than the members of the society either for sale on its own account or for sale through Federal Society or others. But, it may purchase cloth or fabric or product of other weavers' cooperative societies with general or special sanction of Registrar for sale on its own account to consumers or others.
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> Rule 42. **Transactions with non-members:-** No society shall enter into any transaction with a person other than a member unless:--
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> (a) the bye-laws of the society permit it to enter into such transaction, and
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> (b) the previous sanction of the Registrar has been obtained by the society for entering into such transaction."

Section 48 of the Act read with Rule 42 of the Rules contemplate prohibition of any transaction with a person other than a member, unless the bye-laws of the society permit to enter into such transactions and the previous sanction of the Registrar has been obtained in that regard. According to the learned counsel for the petitioner, firstly, the bye-laws of the respondent-Society do not contemplate entering into such transactions, such as, lease etc., with a non-member. Secondly, even assuming that the bye-laws permit, there is no permission obtained from the Registrar of Cooperative Societies in this regard by the society. Therefore, the transaction of entering into lease of the society with the 4th respondent is violative of

statutory obligation. A close examination of Section 48 does not convey a meaning as the learned counsel for the petitioner wants to imbibe. The purport of Section 48 of the Act is very clear when clause (1) is read with clause (2) thereof. What all it indicates is that any business of the society, which is supposed to be taken up only with the members of the Society, cannot be taken up with a non-member without there being prior permission of the authorities or without there being any enabling provision in the bye-laws of the Society and nothing further. What Rule 42 of the Rules says is that a prior permission of the Registrar should be obtained in such circumstances. In fact, either in Section 48 of the Act or in Rule 42 of the Rules, there is no prohibition of entering into contracts with the non-members. In the absence of any such policy prohibiting such contracts without the previous permission of the Registrar, it is hardly sufficient to hold that there is any underlying public policy. The rule symbolizes an administrative convenience. Therefore, the agreement entered into on 30-6-2006 by the 6th respondent with the 4th respondent is not opposed to the public policy. In fact, the provisions of Section 48 of the Act read with Rule 42 of the Rules have no application to the facts of the present case. No fundamental right muchless a legal right of the petitioner has been violated for the purpose of issuing a writ under Article 226 of the Constitution of India against a body, which is, admittedly, not a State within the ambit of Article 12 of the Constitution. Unless and until the statutory obligation is in the nature of a public policy safeguarding the interests of certain sections of the Society and the same is shown to have been violated, no Writ Petition is maintainable.

It may be necessary to notice the provisions of Article 226 of the Constitution of India, which read as under:

> "226. *Power of High Courts to issue certain writs*.—(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto and certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and **for any other purpose**.
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> (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.
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> (3) & (4)……." (emphasis supplied)

As noticed above, neither a fundamental right nor any legal right conferred on the petitioner has been violated; therefore, a writ cannot be issued under Article 226 of the Constitution. However, learned counsel for the petitioner stated that a writ can be issued for 'any other purpose'. 'Any other purpose' means a purpose for which any of the writs, according to the well established principles, could be issued. Under the first part, a writ may be issued after a decision that the aggrieved party has a fundamental right and that it has been infringed or it must be issued only after finding that the aggrieved party has a legal right, which entitles him to any of the writs and that such right has been infringed. "Any other purpose" in short means, the enforcement of any legal right and performance of any legal duty. A legal right, of course, means a legally enforceable right and includes contractual rights other than merely personal rights. When there is a negligence of public duty on the face of it and infringement of either a fundamental right or a legal right, there will be no bar to proceed under Article 226 of the Constitution. Here, in this case, neither the petitioner's

fundamental right nor any legal right conferred by the statute has been infringed. Therefore, the question of issuing a writ under Article 226 does not arise. Further, a complaint of violation of each and every statutory rule and conditions does not furnish a ground for interference of the Court under Article 226. Unless it is established that the violation of a directory provision has resulted in loss and/or prejudice to the party before the Court, no interference is warranted. Even in case of violation of a mandatory provision, interference does not follow as a matter of course. The functions of the Court under Article 226 of the Constitution are not mechanical rather it is always a considered course of action. Firstly, Section 48 of the Act read with Rule 42 of the Rules does not confer any legal right and no legal right of the petitioner is infringed. Further, it is interesting to notice that the petitioner has participated in the Governing Body meeting of the Society held on 21-3-2006 and gave a suggestion that the subject premises could be leased out for Rs.20,000/- and more per month and the same was accepted by the majority members. Thereafter, he walked out of the meeting and did not sign the Minutes and filed the present Writ Petition. The intention of the petitioner appears to be not fair.

For all the above reasons, the Writ Petition is devoid of merits and is liable to be dismissed. Accordingly, the Writ Petition is dismissed. However, this will not preclude the petitioner from working out his remedies as available under law. No order as to costs.

21-8-2006

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